

MBF HOLDINGS BERHAD & ANOR.

v.

HOUNQ HAI KONG & 2 ORS.

HIGH COURT, KUALA LUMPUR
DATO' ANUAR BIN DATO' ZAINAL
ABIDIN J.

[CIVIL SUIT NO. S4-22-75-1993]
2 JUNE 1993

PRACTICE AND PROCEDURE. Contempt of Court - Refusal to obey order of Court - Whether High Court has jurisdiction to hear proceeding of contempt - RHC 1980 Order 52 and Order 45 rule 5(1)(b) - Status of common law.

CONSTITUTIONAL LAW: Freedom of speech and expression - Can Court prevent exercising of such rights - Federal Constitution Articles 10 and 162.

On 9 February 1993 the plaintiffs were granted *ex parte* interlocutory injunction restraining the defendants from doing certain acts, including printing, circulation, distributing or publishing any allegation of impropriety, irregularity and illegality against the plaintiffs or their subsidiaries and affiliated companies.

The plaintiffs filed a notice of motion for an order that the defendants be committed to prison for their several contempts of the Court, in that the defendants have disobeyed or refused to obey the order of the Court dated 19 February 1993.

The defendants took preliminary objections as to the jurisdiction of the Court based on constitutional grounds.

Held:

[1] The law of contempt under Article 10(2) is limited to matters involving the rights of freedom of speech and expression under Article 10(i)(a). It does not extend to other instances of contempt of Court.

[2] Common law is not a mere precedence for the purpose of making a judicial decision. Common law is a substantive law which has the same force and effect as a written law. It has been accepted in this country and is recognised as a binding authority. It is therefore not true to say that under Article 162 common law no longer exists. Under Article 162 common law comes within the

a meaning of "existing laws" and therefore until it is repealed by the authorities it continues to be enforced after Merdeka Day

[3] The Courts of Judicature Act, which is a law made by Parliament after Merdeka, did not remove the jurisdiction and powers of the Court to apply common law in this country. It seems certain that Parliament did not consider it wise to abandon the principles of common law altogether from our legal system. Consequently, common law remains in force and continues to form part of the Law of Malaysia.

c [4] It is paramount in the public interest that every Court should have power and authority or jurisdiction to punish persons who scandalize it or disobey orders made by it. If such power is absent, then the public will lose all confidence in the authority of the judicial arm of the State leading to anarchy and disorder. This is the judicial basis for the law of contempt.

[Preliminary objection dismissed with costs].

Cases referred to:

- e *Att. Gen. v. BBC* [1980] 3 WLR 109, 119 (cit)
Datuk Hong Kim Sui v. Tiu Shi Kian & Anor. [1987] 1 MLJ 345 PC/[1987] 1 CLJ 438 (cit)
Lee Lee Cheng v. Seow Peng Kwang [1960] MLJ 1 (cit)
Attorney General v. Times Newspaper Ltd. [1974] AC 273, 302 (foll)
Packer v. Peacock [1912] 13 CLR 577 (foll)
f *Re Gerson; Re Nightingale* [1946] SCR (foll)
Canadian Broadcasting Corporation & Ors. v. Cordeau & Ors. 101 DLR (3d) 24 (foll)
The Queen v. Forbes 127 CLR 1, 7 (cit)
Arthur Lee Meng Kwang v. Faber Merlin Malaysia Bhd. & Ors. [1986] 2 MLJ 193/[1986] 2 CLJ 109 (cit)
g *Lee Kuan Yew v. Chin Vui Khen* [1991] 3 MLJ 494 (cit)
PP v. Dato' Yap Peng [1987] 2 MLJ 311/[1987] 1 CLJ 362, 550 (cit)
Liyana v. The Queen [1967] AC 259, 287 (foll)

Legislation referred to:

- h Civil Law Act, s. 3
Contempt of Court Act 1981 (UK)
Courts of Judicature Act 1964, ss. 13(2), 25
Federal Constitution Articles 10, 121, 126, 162
Rules of the High Court 1980, O. 45 r. 5(1)(b)(i), 52, 59

i For the plaintiffs - G. Sri Ram (David Morais & S.C. Loh with him); M/s. Cheang & Ariff
For the 1st & 2nd defendants - Karpal Singh; M/s. Karpal Singh & Co.

For the 3rd defendant - Dominic Puthuchear & Lim Kean Chye; M/s. Wee Choo Keong & Faaiz

JUDGMENT

Anuar bin Dato' Zainal Abidin J:

On 9 February 1993 I granted the plaintiffs in this action an *ex parte* interlocutory injunction restraining the defendants from doing certain acts, including printing, circulating, distributing or publishing any allegation of impropriety, irregularity and illegality against the plaintiffs or their subsidiaries and affiliated companies. The plaintiffs, on 23 February 1993, obtained *ex parte* leave before me to issue a motion for contempt against the defendants for their alleged disobedience of the order in question.

On 20 February 1993, the defendants filed an application to set aside the injunction. Later, on 25 February 1993, the plaintiffs filed their substantive motion to commit the defendants for contempt. In an earlier ruling which I made on 23 March 1993, I held that the plaintiffs' motion for contempt ought to be heard first. The defendants' appeal against my decision to the Supreme Court was heard on 28 April 1993. In a written judgment delivered on 8 May 1993, the Supreme Court dismissed the appeals by the defendants against my decision. Consequently, I fixed the motion for hearing on 27 and 28 May 1993.

The hearing on 27 and 28 is in respect of the notice of motion (Encl. (27)) filed by the plaintiffs for an order that the 1st defendant, 2nd defendant and the 3rd defendant be committed to prison for their several contempts of this Honourable Court. The allegation of contempt is that the 1st defendant, the 2nd defendant and the 3rd defendant have disobeyed or refused to obey the order of this Court dated 9 February 1993.

The defendants have, at the commencement of the hearing of the motion, taken an objection as to jurisdiction based on constitutional grounds.

To my mind the preliminary objection is unnecessary. However, I heard argument on the points raised on 27 and 28 May 1993 and reserved judgment to today.

The argument of the defendants is primarily based on Article 10 of the Federal Constitution. Article 10 of the Federal Constitution

a deals with freedom of speech and expression, the following are the relevant provisions:

10. (1) Subject to Clauses (2), (3) and (4):

- (a) every citizen has the right to freedom of speech and expression;
- (b) ...
- (c) ...

(2) Parliament may by law impose -

- (a) on the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of Court, defamation, or incitement to any offence;

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The defendants contend that any law which restricts the right conferred by Clause (1) can only be made by Parliament. Furthermore, only Parliament has the power to provide law against contempt of Court.

It is the defendants' case that Parliament has not passed any law in the nature of a Contempt of Courts Act (such as those as are in legislative existence in India and the United Kingdom) so that there is no law conferring jurisdiction upon the High Court to punish for contempt.

The objection raises important questions relating to preservation of freedom of speech and prevention of contempt of Court. Undoubtedly these are difficult to reconcile with each other. It was urged upon the Court that only Parliament may provide for the law of contempt. That exclusive right cannot be given to any other body including the Courts. Otherwise the scope of contempt of Court would be unnecessarily extended and accordingly freedom of speech and expression would be unnecessarily contracted (See *Att. Gen. v. BBC* [1980] 3 WLR 109, 119).

It is argued that the law of contempt under Article 10 of the Constitution encompasses a very wide field. Article 10 envisages all manner of contempt of Court.

I must make it plain here that I do not agree with the contention that all contempt of Court must come under the provision of Article 10. In my view the law of contempt under Article 10(2) is limited to matters directly involving the rights of freedom of speech and expression under Article 10(1)(a). It does not extend to other instances of contempt of Court.

The Rules of the High Court 1980, and in particular O. 52 thereof, so the argument goes, is a mere procedural vehicle that confers no jurisdiction upon me to punish any person who scandalizes the Court or with impunity disobeys any order that I may issue against him.

The defendants contend that the subject matter before the Court involves the right to freedom of speech and expression which is enshrined under Article 10 of the Constitution. It is the right of every citizen and in particular, Member of Parliament, to have the freedom of speech and expression where matters of public interest are involved. It is submitted that in this case a matter of public interest and importance is in issue. The defendants therefore have a right to have the freedom to speak out against any mismanagement or conspiracy in the plaintiffs' company. It is said that the Court has no jurisdiction or power to prevent the defendants from exercising their rights to freedom of speech and expression.

With respect I think the defendants have missed the point. The case before me is an application to commit the defendants to prison for their part in disobeying the order of Court. The contempt proceeding therefore is not a contempt in respect of restriction on freedom of speech or expression, it is a contempt proceeding taken against the defendants for having disobeyed the order of Court restraining them from doing certain acts. The order of injunction dated 9 February 1993 is as follows:

It Is Ordered And Directed that an injunction do issue until further order to restrain the defendants and each of them by themselves, their servants or agents or otherwise howsoever from printing, circulating, distributing or publishing in any manner whatsoever any allegation of impropriety or irregularity or illegality of whatsoever

a nature against the first plaintiff or the second plaintiff or any of their respective subsidiaries or affiliates more particularly identified in the Annexure attached hereto or of any of their officers **And It Is Further Ordered** that the costs of this application be paid by the defendants.

b There is *prima facie* evidence that the defendants failed to comply with the Court's order. Failure to obey a Court's order is a contempt of Court. Under O. 45 r. 5(1)(b) it is provided that where a person disobeys a judgment or order requiring him to abstain from doing an act, then the judgment or order may be enforced, with the leave of the Court, by an order for committal. The relevant provision of Order 45 r. 5(1)(b)(i) reads as follows:

(1) Where -

d (a) ...
(b) a person disobeys a judgment or order requiring him to abstain from doing an act.

then, subject to the provisions of these rules, the judgment or order may be enforced by one or more of the following means, that is to say -

e (i) with the leave of the Court, an order of committal;

f In the case of *Datuk Hong Kim Sui v. Tiu Shi Kian & Anor.* [1987] 1 MLJ 345 PC, it was held that while the order of the Court stood unvaried, the defendants are bound to comply with its terms. The defendants therefore are subject to the committal process in terms of O. 45 r. 5(1)(b)(i).

g The defendants further contend that Article 126 of the Federal Constitution and s. 13(2) of the Courts of Judicature Act 1964, do not confer jurisdiction to the Court to hear any proceeding of contempt of Court.

These 2 provisions are set out below:

Art. 126 The Supreme or a High Court shall have power to punish any contempt of itself.

h Sec. 13(2) The High Court shall have power to punish any contempt of itself.

It is submitted that the two provisions merely give the Court **power** to punish any contempt of itself but do not confer the requisite jurisdiction.

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If that was so it would appear to me that any order given by the Court can be disregarded and disobeyed with impunity, the Court having no power to deal with such offenders.

To my mind that cannot be the case.

Prior to Merdeka Day, the Court has always had the power to deal with proceedings for contempt of Court. This power admittedly is derived from the Common Law of England. Even after Merdeka the Court has been exercising the same power without any objection to its jurisdiction. The present case, I believe, is the first of its kind in which the jurisdiction of the Court is being challenged in respect of proceedings of contempt of Court.

It is submitted by the learned Counsel for the defendants that after Merdeka the Court no longer enjoys the same jurisdiction in respect of proceedings for contempt of Court as it has done before Merdeka.

The jurisdiction of the Court is now governed by s. 25 of the Courts of Judicature Act. Section 25 of the Courts of Judicature Act 1964 reads:

25. (1) Without prejudice to the generality of Article 121 of the Constitution the High Court shall in the exercise of its jurisdiction have all the powers which were vested in it immediately prior to Malaysia Day and such other powers as may be vested in it by any written law in force within its local jurisdiction.

(2) Without prejudice to the generality of subsection (1) the High Court shall have the additional powers set out in the Schedule:

Provided that all such powers shall be exercised in accordance with any written law or rules of Court relating to the same.

It is clear, reading s. 25 above, that all the powers which were vested in the Courts in the exercise of its jurisdiction prior to Malaysia Day became vested in the Court after Malaysia Day. This clearly means that jurisdiction vested in the Court prior to Malaysia Day continues to be exercised by the Court after Malaysia Day. It follows therefore that the jurisdiction vested in the Court to hear contempt proceeding before Malaysia Day will

a also continue to be vested in the Court after Malaysia Day.

The defendants, however, contend that the jurisdiction and power of the Court under s. 25 of the Courts of Judicature Act must be subject to Article 162 of the Federal Constitution. Under Article 162 of the Constitution the existing law shall only continue after Merdeka Day with modifications as may be made therein. Article 162(1) reads:

c 162(1) Subject to the following provisions of this Article and Article 163, the existing laws shall, until repealed by the authority having power to do so under this Constitution, continue in force on and after Merdeka Day, with such modifications as may be made therein under this Article and subject to any amendments made by Federal or State law.

d It is argued that "existing laws" do not include the Common Law of England. It is therefore argued that the Article does not give Common Law any more a status than what is given to s. 3 of the Civil Law Act.

e It is submitted that the application of the Common Law of England is merely an application of precedence in the process of judicial decision making. It does not create rights or liabilities as such. Therefore Common Law rules are to be regarded as valid for that purpose only.

f With respect I do not agree with the learned Counsel's interpretation of Article 162. Common Law is not a mere precedence for the purposes of making a judicial decision. Common Law is a substantive law which has the same force and effect as a written law. It has been accepted in this country and is recognised as a binding authority. It is therefore not true to say that under Article 162 Common Law no longer exists. I am of the view that under Article 162 Common Law comes within the meaning of "existing laws" and therefore until it is repealed by the authority it continues to be enforced after Merdeka Day.

h It is further argued that under Article 162(6) of the Constitution, the Court, when applying the provision of any existing law shall do so with such modifications as may be necessary to bring it into accord with the provisions of the Constitution. It is submitted therefore

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that Article 162(6) requires the Court to modify the existing laws that is Common Law, to bring it into accord with the provisions of the Constitution, that is Article 10. The argument is that all laws within the definition of "existing laws" would be subject to the express provision of Article 10(1).

With respect I am unable to accept that argument. I am of the view that under Common Law the Court has the power to restrain anyone from publishing, unless with just cause, something which is or which is likely to cause damage or injury to other people.

In the case before us the plaintiffs alleged that the defendants have caused damage and injury to the business of the plaintiffs by the action of the defendants. In their application the plaintiffs have shown *prima facie* evidence to support the allegation. There was therefore good grounds for the Court to issue the restraining order against the defendants to prevent them from further causing damage and injury to the plaintiffs pending the trial of the case. It is to be noted that the restraining order is not intended to prevent the defendants from publishing the matter but merely to postpone it.

I am therefore of the view that the order issued by the Court restraining the defendants is within the jurisdiction and powers of the Court to do so.

It would be misleading to say that Common Law overrides Statute Law. Rather, Common Law is to be regarded as complementary to the written law. It exists side by side with the written law where no law has been enacted by Parliament.

I am sure that Parliament is aware that Common Law existed before Merdeka. It would be a very simple matter for Parliament to remove Common Law from the judicial system if Parliament so desires. The fact that Parliament, in its wisdom, never thought it necessary to take any positive step to remove Common law from our legal concept lends support to my view that Common Law continues to exist after Merdeka.

It is to be noted that the Courts of Judicature Act, which is a law made by Parliament after Merdeka, did not remove the jurisdiction and powers of the Court to apply Common

a Law in this country. It seems certain to me that Parliament did not consider it wise to abandon the principles of Common Law altogether from our legal system. Consequently, Common Law remains in force and continues to form part of the law of Malaysia.

b I also found it necessary to issue the restraining order although the result may be drastic against the defendants. I am fortified in this view by the speech of Lord Scarman in the case of *Att. Gen v. BBC (supra)* when he said at page 138:

c But the prior restraint of publication, though occasionally necessary in serious cases, is a drastic interference with freedom of speech and should only be ordered where there is a substantial risk of grave injustice.

It is with the view to prevent grave injustice from being done to the plaintiffs that the Court issued the injunction against the defendants.

d It is part of the defendants' argument that there is a distinction between the term "jurisdiction" and "power". *Lee Lee Cheng v. Seow Peng Kwang* [1960] MLJ 1 was cited in support of this argument. In that case, Thomson CJ (as he then was), said (at page 3 of the report):

f It is axiomatic that when different words are used in a statute they refer to different things and this is particularly so where the different words are, as here, used repeatedly. This leads to the view that in the Ordinance there is a distinction between the jurisdiction of a Court and its powers, and this suggests that the word "jurisdiction" is used to denote the types of subject matter which the Court may deal with and in relation to which it may exercise its powers. It cannot exercise its powers in matters over which, by reason of their nature or by reason of extra-territoriality, it has no jurisdiction. On the other hand, in dealing with matters over which it has jurisdiction, it cannot exceed its powers.

g The same distinction between jurisdiction and powers is to be observed in s. 46 which deals with criminal matters. The first subsection sets out by reference to the First Schedule to the Ordinance, which is of the same sort of structure as the Second Schedule, the original criminal jurisdiction of the Court whereas it is the Second sub-section which gives it the power when exercising

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that jurisdiction to pass any sentence allowed by law.

It is to be observed in passing that a similar distinction is to be found in the Judicature Act 1925 (and was to be found in the Act of 1873). Certain sections (e.g. 18, 20 and 21) relate in terms to the jurisdiction of the High Court. Others (e.g. 39 and 46) provide that the Court "shall have powers".

The view that in the Ordinance jurisdiction is not synonymous with powers gains strength when the Ordinance is considered in the light of the 1948 Agreement.

Clause 77 of the Agreement provides that the Supreme Court shall be a Court of unlimited jurisdiction, that it shall consist of a High Court and a Court of Appeal and that its constitution, powers and procedure may be prescribed by Federal Ordinance. Clearly here "jurisdiction" must mean something different from "power". Jurisdiction is unlimited. But unlimited jurisdiction cannot mean unlimited power because as regards the powers of the Court it is provided that these may be prescribed by Federal Ordinance and in the nature of things something which is unlimited cannot be capable of being prescribed. This leads to the conclusion that the expression "jurisdiction" is used as meaning the power that is given to it by the law and that when the Clause says that jurisdiction is unlimited it means that there is authority to exercise such judicial power as is given by law in any type of matter whatsoever in which the law authorises or requires judicial power to be exercised.

Mr. Lim Kean Chye on behalf of the 3rd defendant also drew my attention to paragraphs 9 and 10 of the Schedule to the Courts of Judicature Act 1964. Those paragraphs read as follows -

9. Power to enforce judgment of the Court for the payment of money to any person or into Court by a writ, to be called a writ of seizure and sale, under which all the property, moveable or immovable, of whatever description, of a judgment debtor may be seized, except property which is exempt from seizure and sale under any written law.
10. Power to enforce a judgment of the Court in any other manner which may be prescribed by any written law or rules of Court.

It is Mr. Lim's argument that the Courts of Judicature Act, by the foregoing paragraphs,

a recognises only the enforcement of final judgments delivered on merit and not interlocutory or interim orders including *ex parte* orders.

b Historically speaking, the origins of the contempt jurisdiction may be traced to the Common Law of England by which all Courts of record had the power to punish persons who acted in contempt of them. This power was principally exercised by the Court of King's Bench, The Court of Common Pleas and the Court of Exchequer. It was later also exercised by the Court of Chancery. In 1981, by the Contempt of Court Act passed in that year, the U.K. Parliament placed the law relating to contempt of Court on a statutory footing.

c It is paramount in the public interest that every Court should have power and authority or jurisdiction to punish persons who scandalize it or disobey orders made by it. If such power is absent, then the public will lose all confidence in the authority of the judicial arm of the State leading to anarchy and disorder. This is the judicial basis for the law of contempt.

d The importance of maintaining the authority of the Court to ensure that law and order is observed was indicated with typical clarity by Lord Morris of Borth-Y-Gest who said in *Attorney General v. Times Newspapers Ltd.* [1974] AC 273, 302:

e My Lord, the phrase contempt of Court is one which is compendious to include not only disobedience to orders of a court but also certain types of behaviour or varieties of publications in reference to proceedings before courts of law which overstep the bounds which liberty permits. In an ordered community courts are established for the pacific settlement of disputes and for the maintenance of law and order. In the general interests of the community it is imperative that the authority of the Courts should not be imperilled and that recourse to them should not be subject to unjustifiable interference. When such unjustifiable interference is suppressed it is not because those charged with the responsibilities of administering justice are concerned for their own dignity: it is because the very structure of ordered life is at risk if the recognised courts of the land are so flouted that their authority wanes and is supplanted. But as the purpose and existence of courts of law is to preserve freedom within the law for all

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well disposed members of the community, it is manifest that the courts must never impose any limitations upon free speech or free discussion or free criticism beyond those which are absolutely necessary. When therefore a court has to consider the propriety of some conduct or speech or writing, decision will often depend upon whether one aspect of the public interest definitely outweighs another aspect of the public interest. Certain aspects of the public interest will be relevant in deciding and assessing whether there has been contempt of Court. But this does not mean that if some conduct ought to be stigmatised as being contempt of court it could receive absolution and be regarded as legitimate because it had been inspired by a desire to bring about a relief of some distress that was a matter of public sympathy and concern. There can be no such thing as a justifiable contempt of court.

An examination of the authorities shows that such a power is inherent in every Court without the necessity for any legislation upon the subject.

In *Packer v. Peacock* [1912] 13 CLR 577, Griffith CJ put the matter in this way:

The jurisdiction of the Supreme Court invoked in these cases was the jurisdiction which every superior Court possesses to protect itself from any action tending to impair its capacity to administer impartial justice. Such action is called contempt of court, and it must be action affecting the Court itself. Punishment for such contempt, however, is not inflicted in order to vindicate the affronted dignity of the members of the Court, whether Judges or jurymen, but in the interests of the public in general, and in particular of suitors, whose right to obtain a hearing of their suit free from prejudice or bias might otherwise be imperilled.

Again, in *Re Gerson; Re Nightingale* [1946] SCR at page 539, Rinfret, CJ (Canada) said:

The power to punish for contempt is inherent in Courts of superior original jurisdiction, quite independent of enactments in codes or statutes relating to their disciplinary powers.

This statement of principle was approved by the Supreme Court of Canada in *Canadian Broadcasting Corporation & Ors. v. Cordeau & Ors.* 101 DLR (3d) 24.

The phrase "inherent jurisdiction" has been defined as "the power which a Court has

- a simply because it is a Court of a particular description. Thus the Courts of Common Law without the aid of any authorising provision had inherent jurisdiction to prevent abuse of their process and to punish for contempt. Inherent jurisdiction is not something derived by implication from statutory provisions conferring particular jurisdiction; if such a provision is to be considered as conferring more than is actually expressed that further jurisdiction is conferred by implication according to accepted standards of statutory construction and it would be inaccurate to describe it as 'inherent jurisdiction', which, as the name indicates, requires no authorising provision. "Courts of unlimited jurisdiction have 'inherent jurisdiction'" per Menzies J. in the *Queen v. Forbes* 127 CLR 1, 7.
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Coming closer to home, the Supreme Court of Malaysia has, in *Arthur Lee Meng Kwang v. Faber Merlin Malaysia Bhd. & Ors.* [1986] 2 MLJ 193 recognised that Article 126 of the Federal Constitution and s. 13 of the Courts of Judicature Act 1964 have conferred jurisdiction on the Courts in this country to deal with contempt.

- e It has been argued by the defendants that *Arthur Lee's* case is not binding on me because the Supreme Court was not addressed on the difference between powers and jurisdiction. Whilst the discussion may not have taken place, it is plain that even without the aid of the decision in *Arthur Lee*, the High Courts and Supreme Court of this country have ample jurisdiction, authority and power to punish for contempt of themselves. To hold otherwise would be a absurdity and would leave the Courts vulnerable. Public policy demands that this should not happen.
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g In my judgment, for the purpose of the exercise of the contempt jurisdiction the distinction between civil and criminal contempts is irrelevant. As I have said earlier in this judgment, whether it be the scandalizing of a Court or the wilful disobedience of its orders, makes no difference; in both circumstances, the administration of justice will not be served and the public confidence in the judiciary not maintained unless punitive jurisdiction is available to those who exercise the judicial power of the State.

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By reason of the conclusion that I have reached in the preceding passages in this judgment, I find that there is no merit in the elaborate argument that has been addressed to me on Article 10 of the Constitution. The fact that the power reserved to Parliament to enact a specific law to deal with contempt of Court has not been exercised by it does not leave the High Court bereft of any authority or jurisdiction to exercise the specific powers conferred upon it by Article 126 of the Constitution and s. 13 of the Courts of Judicature Act 1964.

I observe that a similar argument as that addressed to me has been advanced in connection with defamation in the case of *Lee Kuan Yew v. Chin Vui Khen* [1991] 3 MLJ 494 and rejected. Whilst I am not in a position to say that I wholly agree with all the reasons given in the judgment in that case for repelling the submissions made, I am entirely persuaded that the conclusion arrived at was correct. For that reason, I reject the defendants' submission that I ought not to follow the decision in that case.

I accept the submissions made that there is a distinction between the jurisdiction of a Court and its power. I am also of the view that I am bound by the observations made by the Court of Appeal in *Lee Lee Cheng (supra)*.

Nevertheless, in the light of the conclusions I have arrived at upon the issue of jurisdiction, I find it unnecessary to deal with arguments addressed to me on the distinction between powers and jurisdiction.

In his final reply, Mr. Lim Kean Chye appearing for the 3rd defendant made what I would term, without any disrespect to the learned Counsel, a rather sweeping submission to the effect that I was not even a Court of law after the amendment to Article 121 of the Constitution made in 1988. Contrary to Mr. Lim's views, that amendment was not a result of what has been called by Counsel as the judicial crisis that took place in that year. That amendment was the direct consequence of the decision in Dato' Yap Peng's case *PP v. Dato' Yap Peng* [1987] 2 MLJ 311. By that amendment, the phrase "judicial power" was removed from Article 121 of the Constitution.

Mr. Lim submits that the effect of this amendment is to deprive the Courts of any

a judicial power and has reduced them to something akin to an administrative tribunal. Without going into the full breadth of the argument, I think that a complete answer to the submission made by Counsel is to be found in the decision of the Privy Council in *Liyanage v. The Queen* [1967] AC 259, 287.

b For the reasons that I have set out in this judgment I dismiss the preliminary objection as to jurisdiction with costs. I also grant to the plaintiffs a Certificate for two Counsel under the provisions of O. 59.

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